

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MANUEL TORRES TAMAYO, JR.,

Plaintiff,

v.

MIKE EVANS, et al.,

Defendants.

No. C 08-4544 PJH (PR)

ORDER OF DISMISSAL

Plaintiff, an inmate at Salinas Valley State Prison, filed a pro se civil rights complaint under 42 U.S.C. § 1983. Because the complaint involves events which occurred in this district, venue is proper in this court. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Similarly, the court may dismiss on these grounds a case filed in forma pauperis, whether filed by a prisoner or not. 28 U.S.C. § 1915(e). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

B. Analysis

The complaint in this case is duplicative of the complaint plaintiff filed to commence case number C 08-2945 PJH (PR). Indeed, the majority of the complaint herein is a copy


1 of the complaint filed in the previous action, and sets forth the same claims and allegations
2 against the same defendants. An in forma pauperis complaint that merely repeats pending
3 or previously litigated claims may be considered abusive and dismissed under the authority
4 of section 1915(e). *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). An in
5 forma pauperis complaint repeating the same factual allegations asserted in an earlier
6 case, as here, even if filed against new defendants, is therefore subject to dismissal as
7 duplicative. See *id.* The instant complaint therefore will be dismissed. To the extent
8 plaintiff has additional claims or allegations that he wishes to make against new
9 defendants, he must do so by seeking leave to file an amended complaint in his pending
10 case, not by filing a new complaint in a new action as he has done herein.

11 CONCLUSION

12 The complaint is **DISMISSED** as duplicative. The clerk shall close the file.

13 **IT IS SO ORDERED.**

14 Dated: April 8, 2009.



PHYLLIS J. HAMILTON
United States District Judge

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